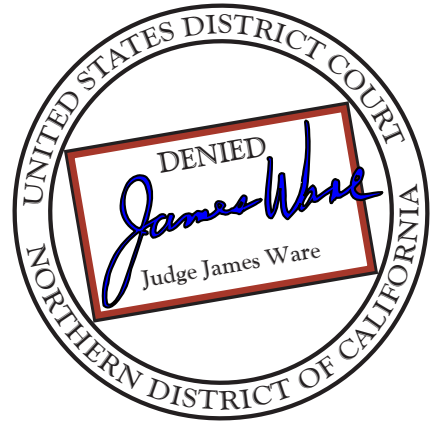


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COSTCO WHOLESALE CORPORATION,
HOMEDICS-U.S.A., INC. (erroneously sued and
served herein as "U.S.A.-HoMEDICS, INC.") and
TAYLOR PRECISION PRODUCTS, INC.



**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

GINA DRAKE,
Plaintiff,
vs.

COSTCO WHOLESALE
CORPORATION, U.S.A.-HoMEDICS,
INC., TAYLOR PRECISION
PRODUCTS, INC., and DOES 1 through
100, inclusive,
Defendant.

Case No. C 06 04682 JW

**STIPULATION TO REMAND
ACTION TO STATE COURT;
[PROPOSED] ORDER**

Complaint Filed: June 27, 2006

The parties, by and through their respective counsel of record, hereby stipulate and respectfully request that the Court enter an order remanding the action captioned *Drake v. Costco Wholesale Corporation et. al.*, Case No. C 06 04682 JW (N.D. Cal.) to the Superior Court of the State of California for the County of Santa Cruz for further proceedings.

Plaintiff GINA DRAKE ("MS. DRAKE") alleges that she suffered a laceration to her foot on 16 August 2005 .

This is a product liability action filed by plaintiff GINA DRAKE in the California state court based on an incident of 16 August 2005 in which she alleges that she was injured from the use of a glass scale distributed by defendant

1 HOMEDICS-U.S.A., INC. (“HOMEDICS”) that she purchased from defendant
2 COSTCO WHOLESALE CORPORATION (“COSTCO”).

3 This is a diversity case removed pursuant to 28 USC 1332. The substantive
4 law of the State of California is to be applied.

5 The following good cause exists for the Court to grant this Stipulation in its
6 entirety:

7 The parties have agreed that due to the severity of the injuries and the on-
8 going medical treatment by the plaintiff, that the interests of justice would be better
9 served with the remand of the case so that the plaintiff may complete her medical
10 treatment and the defendants have an opportunity to evaluate the injury. The parties
11 have indicated their desire to submit this matter to mediation, but cannot proceed
12 with meaningful discussions until the plaintiff’s medical treatment has been
13 completed. The parties agree that the state court forum would be most amenable to
14 such a resolution involving state court issues.

15 MS. DRAKE’S medical condition has recently and progressively deteriorated,
16 such that it is presently uncertain as to the extent of her claimed injury and damages
17 that are at issue in this case. Plaintiff is now claiming a number of worsening
18 conditions, including severe and chronic neurological deficits and a severely
19 compromised immune system. Her medical treatment is now aggressively treating
20 different systemic problems, including RSD. Most recently, in the last few months,
21 MS. DRAKE has commenced a new “experimental” type of treatment, including
22 gamma globulin injections, in an attempt to boost her immune system. Each
23 treatment costs \$40,000.00. She receives one treatment each month. Plaintiff has
24 identified for the first time those doctors involved in the latest treatments.
25 Defendants have not had an opportunity to examine the most recent records,
26 including those evaluating her present condition. Her condition is not yet permanent
27 and stationary. At that time, the extent of plaintiff’s medical condition will be ready
28

1 for evaluation by the parties to this litigation and the court. This court has complete
2 discretion to order this remand and no statement of reasons is required.

3 Dated: February____, 2008

RICHARD E. DAMON, PC

4
5 By: _____

6 Richard E. Damon
7 Attorneys for Plaintiff
8 GINA DRAKE

9 Dated: February 19, 2008

SHAW, TERHAR & LaMONTAGNE, LLP

10 By: /s/ John W. Shaw

11 John W. Shaw
12 Attorneys for Defendant
13 COSTCO WHOLESALE
14 CORPORATION, HOMEDICS-
15 U.S.A., INC. (erroneously sued and
served herein as "U.S.A.-
HoMEDICS, INC.") and TAYLOR
PRECISION PRODUCTS, INC.

16 *** ORDER ***

17 The Court conducted a Preliminary Pretrial Conference on February 25, 2008. Counsel for
18 Defendant was present; however, no one appeared on behalf of Plaintiff.

19 On August 1, 2006, this case was removed to this Court from Santa Cruz County Superior
20 Court. (Docket Item No. 1.) The parties now request that this case be remanded back to state
21 court, and they have filed a stipulation to that effect. (Docket Item No. 23.)

22 Title 28 U.S.C. § 1447(c) provides, in relevant parts: A motion to remand the case on the basis
23 of any defect other than lack of subject matter jurisdiction must be made within 30 days after the
24 filing of the notice of removal under section 1446(a). If at any time before final judgment it
25 appears that the district court lacks subject matter jurisdiction, the case shall be remanded.

26 The parties do not contend that the Court lacks subject matter jurisdiction over this case.
27 Moreover, the parties have failed to make their request to remand on the basis of some other defect
28 within the thirty days provided by statute. Rather, the parties seek remand based solely on their
agreement that remand is in their best interests. The Court finds that the parties have not stated a
basis under § 1447 upon which the Court may remand. Accordingly, the parties request to remand
this case is DENIED.

In light of this Order, the parties shall appear for a Preliminary Pretrial Conference on **March
10, 2008 at 10 a.m.** Failure to appear at this conference may result in sanctions and dismissal of
the action for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

The parties shall file a Joint Preliminary Pretrial Statement by **March 3, 2008.**

Dated: February 26, 2008


JAMES WARE

United States District Judge